

REMARKS

Claims 1 and 2 have been rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 35 of U.S. Patent No. 6,794,449. With this amendment, applicant is submitting a properly executed terminal disclaimer which is believed to obviate the rejection.

Claims 1-25 have been rejected under 35 U.S.C. 102(e) as being anticipated by Fisher, U.S. Patent No. 6,794,449. However, applicant submits that Fisher '449 is not prior art under 35 U.S.C. 102(e). In order to apply a reference under 35 U.S.C. 102(e), the inventive entity of the application must be **different** than that of the reference. See MPEP 706.02(a). That is not the case here. Dennis Fisher is the only named inventor in the present application and in the cited reference. Accordingly, the rejection under 35 U.S.C. 102(e) is improper and should be withdrawn. Applicant further wishes to point out that the present application and the '449 patent are assigned to the same assignee.

With the submission of the enclosed terminal disclaimer, applicants submit that claims 1-25 are in condition for allowance. Early notification of allowance is respectfully requested.

Respectfully submitted,

DINSMORE & SHOHL LLP

By Susan M. Luna
Susan M. Luna
Registration No. 38,769

One Dayton Centre
One South Main Street, Suite 1300
Dayton, Ohio 45402-2023
Telephone: (937) 449-6429
Facsimile: (937) 449-6405